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No. 83-166

In the Supreme Court of the United States

OCTOBER TERM, 1983

ROBERT ANGELO GUIPPONE AND
ANTHONY MICHAEL PORCELLI, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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Solicitor General

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QUESTION PRESENTED

Whether the government improperly denied petitioners access to the original recordings of certain intercepted conversations that were admitted into evidence at their trial.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 2a-52a) is reported at 702 F.2d 299.

JURISDICTION

The judgment of the court of appeals was entered on February 22, 1983 (Pet. App. 1a). A petition for rehearing was denied on May 2, 1983 (Pet. App. 53a). Justice Marshall extended the time within which to file a petition for a writ of certiorari to and including July 31, 1983 (Pet. App. 55a), and the petition was filed on Monday, August 1, 1983.

STATEMENT

After a jury trial in the United States District Court for the Southern District of New York, each petitioner was convicted of conspiring to possess and distribute heroin and cocaine, in violation of 21 U.S.C. 846, and possessing cocaine with intent to distribute it, in violation of 21 U.S.C. 841(a)(1). Petitioner Porcelli was also convicted of possession with intent to distribute heroin, in violation of 21 U.S.C. 841 (a)(1). Petitioners were each sentenced to 30 years' imprisonment and lifetime special parole. In addition, petitioner Porcelli was fined $150,000 and petitioner Guippone was fined $100,000. The court of appeals affirmed. Pet. App. 2a-52a.

1. The evidence at trial is summarized in the opinion of the court of appeals (Pet. App. 17a-24a, 37a-39a).[1] It showed that from October 1980 to May 1981 co-defendant Willard Williams managed a continuing narcotics business from his duplex apartment in New York City (*id.* at 17a). Williams received and possessed wholesale quantities of heroin and cocaine, resold these drugs to distributors, and paid back petitioners and other suppliers, laundering and banking the profits (*ibid.*).

On October 31, 1980, a week after an undercover DEA agent first purchased narcotics originating from Williams' apartment, petitioners, who were previously convicted narcotics violators, were observed departing from the apartment with a large paper bag (Pet. App. 19a). On numerous occasions thereafter, petitioners visited Williams' apartment and left with packages (*id.* at 20a). Their frequent discussions

[1] It is explained in more detail in the government's brief in the court of appeals, a copy of which we are lodging with the Clerk of this Court.

with Williams were lawfully intercepted by the government through listening devices installed in Williams' apartment.[2] These discussions concerned purchases of heroin and cocaine, amounts of money paid and owed, and problems in obtaining payment from co-defendant Saint Julian Harrison, one of Williams' distributors. *Ibid.*[3]

On March 6, 1981, petitioners received $30,000 from Williams and arranged to supply him with three-quarters of a kilogram of cocaine (Pet. App.

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[2] The electronic surveillance was monitored by two agents, who listened to the conversations as they were recorded simultaneously on two machines (Tr. 824-828; 11/11/81 H. Tr. 1023). The agents were instructed to minimize the interception and the recording of non-pertinent conversations (Tr. 806-808, 831-834). At the end of each 8-hour shift an agent would place one of each set of duplicate tapes in a heat-sealed envelope. The envelopes were packed in cardboard boxes and delivered to the DEA evidence vault, and then to the district court supervising the surveillance for sealing. Tr. 810-816, 823. There were "perhaps 200" of these "[c]ourt originals"; the other set of duplicate tapes—"work copies"—were taken to the United States Attorney's office for review and study (Tr. 819, 824-825, 870). The court originals were eventually unsealed in order to duplicate them, and to prepare more audible copies (Tr. 885-887; cf. 11/11/81 H. Tr. 1023-1024). They were then resealed until unsealed for use at trial (Tr. 885). During this period they were kept at the United States Attorney's office (Tr. 885).

[3] The discussions are summarized in the government's court of appeals brief (at 19-29). We are lodging with the Clerk of this Court copies of the transcripts of the discussions in which petitioners participated that were played to the jury. These conversations include Williams' inquiry about the availability of "coke" and petitioners' assurances that they would deliver it in half or ¾ "ki" [kilogram] lots. Porcelli described it as "Peruvian Flake", which "come out like feathers" (App., *infra*, 9a).

20a; App., *infra*, 10a). On March 16, 1981, petitioner Porcelli received $30,000 from Williams and agreed to hold an eighth of a kilogram of heroin for him (Pet. App. 20a). Petitioners suspended deliveries when they discovered that their car was being watched after a visit to Williams; subsequently, on April 29, 1981, Porcelli and Williams discussed methods of continuing their narcotics business on a more secure basis to avoid government surveillance (*id.* at 21a). When Porcelli was arrested on May 21, 1981, he instructed his daughter to tell his son-in-law to "get rid of" the narcotics he kept at his son-in-law's house (*ibid.*). When Guippone was arrested he had 300 rounds of ammunition in his car (*ibid.*).

2. Petitioners were supplied with copies of all the relevant tapes,[4] and beginning in July 1981 all the physical evidence in the case, which the court of appeals found included the "original" recordings, was available for inspection by defense counsel at the United States Attorney's office or at DEA headquarters (App., *infra*, 1a-4a).[5] Although counsel for co-defendant Onzel Markum audited the tapes in the

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[4] The Assistant United States Attorney informs us that petitioners received copies of both the court originals and the identical work copies (see note 2, *supra*).

[5] The letter reproduced at App., *infra*, 1a-4a was sent to the district court in response to petitioners' February 2, 1982, motion for continuance. The record on appeal, which included the entire record in the district court, did not contain the letter because the trial judge evidently neglected to file it. However, the government expressly represented in its appellate brief (Br. 65) that "the original tapes were made available for defense counsel to listen to at the United States Attorney's Office," and the court of appeals credited this representation (Pet. App. 32a).

United States Attorney's Office, neither counsel for petitioners nor any expert retained by them did so (App., *infra*, 2a).[6] Instead, in November 1981, petitioners moved for an order requiring the government "to make [eight specified] tapes available for independent analysis" (A.A. 387, 11/16/81 H. Tr. 1065-1069).[7] They submitted a supporting affidavit from an electronics expert indicating that he had "listened to and preliminarily examined [two specified] tape recordings" and found "significant aberrations, which seriously call into question the authenticity of these recordings * * * and warrant further examination and analysis" (A.A. 392-393).

The district court found this allegation insufficient and denied the motion, but it suggested that it would reconsider its ruling if it received an affidavit from defendants "setting forth with specificity the alterations claimed to have been made" (A.A. 388, 392). In response, petitioners filed further affidavits from the electronics expert, stating that the "aberrations * * * include certain interruptions in the conversations [and] * * * variations in signal to noise ratio"

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[6] The tapes remained available during the fall; indeed, trial counsel for petitioner Guippone indicated that he intended to listen to them beginning on September 2, 1981. (App., *infra*, 6a). He apparently did not do so. Instead, he arranged to hear them on January 6, 1982, but he chose not to do so because no table was available for his use when he arrived that day (App., *infra*, 2a). No claim was made at that time that special laboratory facilities were necessary for an adequate audit of the tapes.

[7] "A.A." refers to the Appellate Appendix prepared by defendants and cited in the petition. We are lodging a copy of this Appendix and the relevant transcript volumes with the Clerk of this Court.

(A.A. 394, 396)[8] and suggesting that "the [requested] examination may be made by a government designated expert in my presence" (A.A. 395, 397). Petitioners also submitted their own affidavit, stating that the recordings "do not include conversations, or parts thereof which we particularly recall having with Williams during the [relevant] period * * * regarding [gambling]" (A.A. 399). The government responded by noting (11/16/81 H. Tr. 1067-1068; 2/5/82 H. Tr. 10) that the original tapes had been made available to petitioners and that the government recognized its responsibility to prove their authenticity at trial.

The court refused to order the government to submit the original tapes for examination by the defendant's expert before trial, pointing out that the identified "aberrations" were probably the result of the agents' minimization of the recording of irrelevant conversations (2/5/82 H. Tr. 8), and that petitioners' claim that gambling related conversations had been omitted did not suggest that the narcotics conversations had been doctored (2/5/82 H. Tr. 5, 9). The court emphasized (2/5/82 H. Tr. 11) that defendants would have the opportunity to test the authenticity of the recordings at trial (*ibid.*).[9]

At trial, defendants refused to "stipulate to anything regarding authenticity" of the tapes, and the government accordingly undertook the burden of

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[8] The expert's supplemental affidavits also stated that he had detected similar "aberrations" in the six other requested tapes (A.A. 396).

[9] Before trial, the court and trial counsel, with a defense investigator, did spend several days reviewing a number of original tapes to determine whether unauthorized interceptions had occurred (11/10/81-11/11/81 H. Tr. 883-1022).

establishing the authenticity of the tapes by clear and convincing evidence (Tr. 661). At the conclusion of testimony establishing the chain of custody from the time the tapes were originally recorded,[10] the court concluded that there was no "realistic chance" that the tapes had been altered at the listening post[11] and that thereafter the chain of custody was clear (Tr. 911-912). It accordingly admitted the tapes (Tr. 912), but specifically assured defense counsel that if there were anything suspicious about the tapes as they were played,[12] they would be permitted to ex-

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[10] The court overruled a co-defendant's objection to the refusal to call each monitoring agent so that he could be cross-examined about his compliance with established sealing procedures (Tr. 909).

[11] Specifically, the court explained (Tr. 911):

> Now, I don't see in anything we have heard here that there was any realistic chance of this being done by anybody at this operating post. It takes expertise, it takes the fact that an agent in listening to this is going to be saying to himself: Joe, we have got a nice conversation here but if I can slice this thing up and put it together a different way it will make a lot better case for the government.
>
> And he's got to have a chance to do it and get away with it. He's got to know how to do it, he's got to know how to splice, he's got to have the equipment to do the splicing, or he's got to be awfully accurate with those scissors when he makes those snippets and puts it back together.
>
> There is just no showing whatsoever that this agent knew what was wanted or had any opportunity to, motivation or anything else, to have doctored these tapes at the operating post.

[12] Since the original tapes were hard to understand, enhanced and redacted versions were played for the jury (Tr. 850-852, 907).

amine them (Tr. 913-914; cf. Tr. 851-854).[13] Although defendants presented to the jury their argument that the recorded conversations related to gambling (Tr. 3385-3397), there was nothing suggesting that any alteration had been made in the tapes (A.A. 959-960). The district court made a post-trial finding that the tapes had not been altered (Tr. 3457-3458).

ARGUMENT

Petitioners do not dispute that the government, at its own expense, provided them with copies of all requested tape recordings of their conversations intercepted in Williams' apartment (10/22/81 H. Tr. 29-32; 11/11/18 H. Tr. 954-955; 2/5/82 H. Tr. 6-12). They argue instead that the government improperly denied them access to the original tapes of those conversations, which they sought in order to verify their authenticity.[14]

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[13] The court later explained (A.A. 959-960) that "I assumed you had your expert here listening to say he heard a bloop, bloop or bleep, bleep that entitled him to conclude as an expert that there had been an alteration." Petitioner's counsel responded only that the expert "ha[d] to listen and be present when certified copies are made from the originals." No explanation has ever been offered as to why that was necessary.

[14] Petitioners' suggestion at trial was evidently that deletions were made in the tapes before they were sealed (Tr. 841, 856-858, 862-864, 909-912), and that these deletions made what were in fact gambling-related conversations appear to be drug-related (Pet. 7; Tr. 3457-3458; cf. Tr. 3386-3404). In *United States* v. *Fuentes*, 563 F.2d 527, 532 (2d Cir.), cert. denied, 434 U.S. 959 (1977), the court found it "hard to believe that [an informant] could have effectively changed the character of a running conversation, by turning the device on and off, without such attempts being immediately obvious * * * to anyone listening to the tapes." The district court here reached the same conclusion (note 11, *supra*).

1. Petitioners contend that they had an absolute right of "access" to the original tapes, and that there is a conflict among the circuits on this issue. Neither argument has merit. In support of their claims, petitioners rely either on cases dealing with other types of physical evidence, or on cases that hold that the district court has broad discretion to determine whether tapes have been sufficiently authenticated to be admissible (see, *e.g.*, *United States* v. *Biggins*, 551 F.2d 64, 66 (5th Cir. 1977) (noting that "[a] defendant will often hear the tape recording for the first time in court"); *United States* v. *DiMuro*, 540 F.2d 503, 512 (1st Cir. 1976); *United States* v. *Knohl*, 379 F.2d 427, 441-442 (2d Cir.), cert. denied, 389 U.S. 973 (1967)).[15] Where, as here, petitioners have undisputedly been provided with copies of all the relevant tapes, have presented only vague allegations of omissions from clearly incriminating conversations, and have made no remotely credible suggestion of how any alteration might have occurred,

[15] Although petitioners contend (Pet. 16) that *United States* v. *Starks*, 515 F.2d 112 (3d Cir. 1975) is "[i]n marked contrast" to the approach of the other circuits, that case is simply one in which the court of appeals found that the district court had abused its discretion in admitting largely inaudible copies of recordings made on a body mike where the chain of custody was inadequate. To the extent that petitioners rely on an intra-circuit conflict with *United States* v. *Fuentes*, 563 F.2d 527 (2d Cir.), cert. denied, 434 U.S. 959 (1977), that conflict is for the Second Circuit to resolve. *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957). In any event, the court in *Fuentes* simply suggested in passing that the defendant "could have called an expert to examine the tapes for evidence of tampering" in rejecting as incredible a claim of alteration (563 F.2d at 532). There is no suggestion in *Fuentes* that defense access to copies of the tapes would generally be insufficient.

the district court surely did not abuse its discretion in refusing to accede to petitioners' eleventh-hour demand that their expert be permitted to examine the original tapes. Cf. *United States* v. *Haldeman*, 559 F.2d 31, 107-108 (D.C. Cir. 1976), cert. denied, 431 U.S. 933 (1977) ("the possibilities of misidentification and adulteration [of tape recordings must] be eliminated, not absolutely, but as a matter of reasonable probability [citing cases]"; tapes admitted because risk of tampering was "slight").[16]

2. Assuming arguendo that the government was required to give the defendants access to the original tapes, there was in fact no denial of reasonable access here.[17] The original tapes were available for review

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[16] Petitioners rely (Pet. 16) on Fed. R. Crim. P. 16(a)(1) which requires the government to permit the defendant to "inspect and copy or photograph" all statements of defendants and physical evidence in the custody of the government that is material to the defense or that the government intends to introduce at trial. Here, of course, the defendants were given copies of the evidence and, as we note below, were permitted to inspect it.

[17] The record on this purely factual issue is not as clear as it might be, in large part because this issue was only one of a number urged by defendants. (We note that the government's brief in the court of appeals discusses 24 separate issues.) Accordingly, neither the court nor the parties explored the issue thoroughly. For example, it appears that the government believed petitioners were seeking custody of the original tapes (App., *infra*, 3a). Although petitioners now contend (Pet. 20) that they never sought such custody, their contentions below were less clear (see, *e.g.*, A.A. 395). The court of appeals concluded (Pet. App. 32a-33a) that they had sought custody. In addition, petitioners have never explained what sort of "independent analysis" they wished to make, nor shown that the facilities in the United States Attorney's office, where the tapes were being held, were inadequate for that analysis. See, *e.g.*, A.A. 392-397 (affidavits of petitioner's expert).

in the United States Attorney's office before trial. Petitioners' counsel did not choose to review them there (presumably because they had adequate copies), nor did they seek to have their expert review them there or indicate in any way that the facilities there were inadequate. Instead, they moved to have the tapes "available for independent analysis" (A.A. 387), relying on conclusory allegations of "aberrations" (A.A. 392-397)[18] and claims by petitioners of omissions from the conversations as they recollected them (A.A. 399).[19] Although the district judge did permit, and himself participate in, extensive reviews of the original tapes for other purposes (see note 9, *supra*), he found that these allegations were insufficient to require that the prosecution make special arrangements for laboratory analysis of the original tapes by defense experts. After the prosecution established the authenticity of the tapes as they were offered into evidence, the trial court again invited the defense to demonstrate a genuine need to examine them by producing some indication of tampering. No such indication has ever been produced. On balance, we submit that the record here suggests that petitioners'

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[18] These "aberrations" consisted of "certain interruptions in the conversations" and "variations in signal to noise ratio" (A.A. 394, 396), which could be expected if the expert was listening to the enhanced versions of the tapes provided to petitioners and introduced at trial (Gov't C.A. Br. 66).

[19] The district court suggested that the omissions could have resulted from minimization (2/5/82 H. Tr. 8). They could also have been due to the failure of the agents to turn on the intercepting equipment as soon as a petitioner entered the apartment, if the agents watching from across the street miscalculated the time used to travel from the entrance hall to the apartment (see 11/11/81 H. Tr. 969-972).

complaint at trial was not that they had been denied any access to the original tapes, but rather that they had not been given such access on their own terms and conditions, even though they never explained why those conditions were important.[20] This purely factual issue is not one this Court need resolve.

Finally, even if, contrary to the district court's conclusion that there had been no alterations or omissions from the tapes, gambling-related conversations were omitted from the tapes, that omission would not affect the conclusion that the conversations that were recorded related to narcotics. For example, in the conversation between petitioners and Williams on March 6, 1981 (which we have reproduced at App. *infra*, 8a-11a), Williams asked Porcelli for "the rock", and Porcelli replied that, while he didn't have it now, "a guy has some coke. * * * He promised me, I'll give it to you. * * * he scored for me the other night." The "guy" had given away "a ki" of "Peruvian Flake" that "come out like feathers" for what it cost him. Porcelli continued, "I told him, get me some, tell Sonny [Guippone] when he comes out what I said. * * * [Later] I went to see this guy. He says he was gonna give us a half but it'll take a couple more * * * package[s]." When Williams urged "I need it now," Porcelli replied "I ain't got it now. Tonight I'll bring it, Seven thirty." Williams then paid him "20 thou" and asked how much he still owed. Porcelli replied "I figure about least, 15 hundred." Guippone then inquired "What you want?" and Williams responded

[20] We would not, in principle, object to permitting a defendant's expert to examine original tape recordings in the custody of the government, where appropriate arrangements are made to safeguard the integrity of the tapes and the examination is requested in timely fashion.

"You better send me a half. * * * you can send three quarters or send half." Porcelli and Guippone agreed. After hearing this and similar evidence, including references in the recorded conversations of other co-conspirators to petitioners' part in the operation, the jury understandably rejected petitioners' claim (Tr. 3385-3387) that their recorded conversations related to gambling, not drugs. It is hard to imagine how any omitted portions of this conversation could possibly have transformed it from one about drugs into one exclusively about gambling.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

REX E. LEE
Solicitor General

STEPHEN S. TROTT
Assistant Attorney General

JOEL M. GERSHOWITZ
Attorney

NOVEMBER 1983

APPENDIX A

RAM:gcp

February 4, 1982

Honorable Richard Owen
United States District Judge
United States Courthouse
Southern District of New York
Foley Square
New York, New York 10007

Re: *United States v. Willard Williams et al.*,
S 81 Cr. 398 (RO)

Dear Judge Owen:

I am writing in response to the defendants' motion, set forth in the letter of Paul Victor, Esq. dated February 2, 1982, for a continuance of the trial date. We vigorously oppose this application, which is based on a completely distorted recitation of the respective discovery efforts made by the parties.

First, as we advised the Court at the July 9, 1981 pretrial conference, the Government provided to all defense counsel copies of all the papers underlying the wiretaps as well as a listing of all the physical evidence purchased or seized during the course of the investigation, including arrests and searches. (Tr. pp. 3-7, enclosed.) From that date forward, all the physical evidence was available for inspection at our offices, or at DEA headquarters. Precisely because we wanted to avoid time-consuming, piecemeal production of discovery materials, and belated claims such as those of Mr. Victor, we urged defense counsel in July 1981 to see the physical evidence. In fact, as the enclosed letter of July 31, 1981 reflects, we set aside

one week for this specific purpose. During that period, a number of defense counsel, including Mr. Bogan, Mr. Herbst and others, examined the evidence. Mr. Victor and Mr. Goldberg chose not to do so.

During the fall, the physical evidence remained available, and many other counsel arranged to review it without any difficulty. As the date for trial drew nearer, however, we became concerned that defense counsel would wait until the last possible moment before trial to examine the evidence, thereby interfering with our pretrial preparation and the trials of defendants Terry, Bedoya and McMillan, which were scheduled for that same time. In fact, I expressed this concern at the December 11, 1981 pretrial conference [Tr. p. 1068, enclosed], and wrote to defense counsel to arrange a final date (December 23, 1981) when this material would be available for their review. That date, however, was not convenient for Mr. Victor, and, at his request, was changed to January 6, 1982.

On that date, Mr. Victor and Mr. Goldberg arrived to look at the evidence, but, because we had no table for them to use, refused to examine it that day. It should be noted that on that same day, other counsel examined the material and expressed no objection whatever with the Government's facilities. All counsel were aware of the trial date and of the Government's need for a discovery cut-off so that it could reasonably prepare for trial. Nevertheless, Mr. Victor decided to wait a month, until just one week before trial, to see evidence which had been available for the preceding seven months. In sum, the Government has sought continuously to have defense counsel complete their discovery; their persistent failure to do so cannot rationally be blamed on the Government.

Likewise, as we also advised the Court (June 22, 1981, Tr. enclosed), the Government made a complete set of tapes, identical to the ones used by the Government, for defense counsel to borrow. These tapes have been available since July, 1981. However, several defense counsel, including Mr. Victor, insisted on being provided with the Government's *original* tapes, which we declined to provide. Instead, we arranged to have any original tape which they requested copied for them by Paul Ginsburg, an audio expert frequently used by the Government. By this means, Mr. Victor and other counsel obtained copies of any tapes they wanted. The tapes referred to in his letter, however, are those supplied to defendants themselves. In that regard, we have provided to Ed Flores, defendants' investigator, sets of 20 tapes at a time for several months, providing him an additional set of 20 when the last ones were returned. Finally, I have, as Mr. Flores will state, returned every one of his calls, and provided him tapes he requested.

With respect to the transcripts, they are being provided as completed. However, apart from Gerald Shargel, Esq., no defendant has complied with the agreement, reached on July 9, 1981, that the defendants provide transcripts of any conversations they intend to use or reply on, although they agreed to do so by September 15, 1981. (Tr. pp. 47-48 enclosed) Likewise, only Mr. Shargel responded to the Government's demand for reciprocal discovery.

The second reason proferred for delay of the trial is similarly flawed. In effect, Mr. Victor seeks reargument of motions already denied, or claims denial of access to materials that have been available to him. Thus, his request to examine the original tapes, recording equipment and video tapes outside the Gov-

ernment's control has been denied by the Court, yet these materials have been available at our office. In fact, Mr. Bogan reviewed all the video tapes in our offices in the fall, and the Government provided defendants with a composite tape of all the video taped evidence it will offer at trial.

In conclusion, we feel that the application misstates the facts concerning discovery in this case. There is a great gulf between refusing to produce discovery, as claimed, and neglecting to review it, as happened. This last minute effort to find some basis for delay and disruption should be denied.

Respectfully,

JOHN S. MARTIN, JR.
United States Attorney

By:
RICHARD A. MARTIN
Assistant United States Attorney
Telephone: (212) 791-0068

cc: Paul Victor, Esq.

APPENDIX B

DUBLIRER, HAYDON, STRACI & VICTOR
67 Wall Street
New York, New York 10005

(212) 943-0880

August 31, 1981

Richard A. Martin, Esq.
Assistant United States Attorney
One St. Andrew's Plaza
New York, New York 10007

Re: United States v. Willard Williams,
et al and related cases
81 Cr. 426, 427, 428, 439, 431 and 432

Dear Mr. Martin:

I am writing this letter to acknowledge receipt of your rough drafts of transcripts pertaining to both the bug and telephone taps. In order to assure myself that this is a complete list of transcripts, I have annexed hereto an inventory of same. It would be appreciated if you would review this inventory for completeness and accuracy.

If for any reason you intend to use transcripts other than those identified on the inventory, please forward same immediately.

I am also writing to confirm your statement to Ms. Salten-Smith, of my office, relating to the telephone conversation contained in Count 21 of the indictment. It is my understanding, based upon your representation, that the conversation contained in R 66 C1 is the one upon which Count 21 is based.

It would be sincerely appreciated if you could confirm in writing that this is the conversation upon which you based Count 21. In addition thereto, I would also appreciate receiving a copy of the identical conversation which should be contained in your telephone taps. To date, I have been unable to identify the specific conversation within the telephone tap logs.

Pursuant to your agreement we would like to hear the best and most audible copies of all conversations relating to Anthony Porcelli and Robert Guippone. I would like to start at 10:00 A.M. Wednesday morning, September 2, 1981. If this is not a convenient time for you, please let me know so that we can mutually agree on another date.

In addition, it is our client's request that he be permitted to hear the best copies of *all* of the tape recordings, and that he be permitted to listen to said tapes prior to any determination by him with regard to making copies thereof. This is not an unreasonable request since in the past we have found it inexpedient to copy tapes which end up being completely inaudible. Perhaps you and I could arrange to have 10 or 20 of your audible copies of tapes delivered to my client at the MCC for reasonable and limited periods of time.

We have been informed that the government conducted a search of the Social Club, located on Bogart Avenue, Bronx County, a location where Mr. Guippone was observed. We are hereby requesting a copy of the search warrant, the application therefor and an inventory of any items seized.

On Thursday, August 27, 1981, Ms. Salten-Smith went to your office and you gave her what was purported to be all of the still photographs taken as part

of the surveillance at 307 East 89th Street. However, we have looked through the photographs of some of the evidence you sent us in the mail and note that there are copies of photographs designated as evidence exhibit 000, dated February 4, 1981, which she did not see at your office.

In view of this discrepancy please supply us with an inventory and log of all physical evidence, including photographs which are in your possession. This procedure will obviate any claim of surprise at the trial.

It is our further request that we be permitted to makes copies of the following tapes from your sealed originals, to wit: R 2, R 11, R 39, R 47, R 75, R 80, R 96, R 97, R 149, R 166 and R 199.

Since you stated that you will not oppose this application, we have enclosed herewith a stipulation which we can submit to the Court for its endorsement.

Lastly, please let me know as soon as possible when the composite video tapes will be available for review by Mr. Guippone and me, at the MCC.

Very truly yours,

/s/ Paul A. Victor
PAUL A. VICTOR

PAV/eks

encl.

APPENDIX C

Excerpt from conversation of March 6, 1981 between Williams, Porcelli, and Guippone ("Sonny")

* * * * *

WILLIAMS: I want the rock from you.
PORCELLI: I know, I know.
WILLIAMS: I need it now. I got. . .
PORCELLI: I got to go downtown tonight.
WILLIAMS: I got to go to the dentist.
PORCELLI: I got to go, I ain't got it now.
WILLIAMS: I don't believe you.
PORCELLI: Hey, listen to me. I'm cured.
WILLIAMS: Yeah, well, that.
PORCELLI: I didn't take a blow in over two months.
WILLIAMS: Please don't bother to (IU) it.
PORCELLI: Huh, I don't touch you. What's the matter with you, huh? He's out there, a guy has some coke.
WILLIAMS: Yeah
PORCELLI: He promised me, I'll give it to you. I don't want it. You know what I mean? Now he scored for me the other night.
WILLIAMS: Yeah
PORCELLI: He gave it to, he gave it away to that guy gave it away the whole thing.
WILLIAMS: What a ki?
PORCELLI: Yeah, he gave it for what cost him, it cost him (UI).
WILLIAMS: How was it? Was it any good?
PORCELLI: Was it good? He told me what it was.
WILLIAMS: I (ui).
PORCELLI: I, they never seen anything like it, they did us a favor, for the guy's bar.

WILLIAMS: So, why don't you get me some?

PORCELLI: I talked (UI)! Tell him what I told the guy! Give me, I can't give it (UI). You know what was, Peruvian Flake.

WILLIAMS: Oh

PORCELLI: (UI) come out like feathers

WILLIAMS: Oh man, he done did it?

PORCELLI: I told him, get me some (UI), tell Sonny when he comes out what I said. I give, I said I'll bring it to that guy". I told him. When he comes out. He I said it went like, this like feathers.

WILLIAMS: Yea, but Sonny didn't dig it.

PORCELLI: We . . . , Sonny didn't know it. This was the other night. Wednesday night. I was away. I came back Wednesday night. I went to see this guy. He says he was gonna give us a half but it'll take a couple more package. . .

WILLIAMS: Yea, well brung me (UI).

PORCELLI: He cut, no. . . .

WILLIAMS: (UI) package.

PORCELLI: (UI) couple more packages.

WILLIAMS: Yea.

PORCELLI: He did it for a favor this guy. So he did it for him. He won't bother with that. So when I when I seen this friend, I said, give me some, I gotta bring, go see a friend of mine. I'll bring it. What was I telling, what happened?

GUIPPONE: Ya, what's that?

WILLIAMS: (UI)

PORCELLI: That (UI) Peruvian flake. What happened?

GUIPPONE: Why did you tell him? You got to aggravate him now right?

WILLIAMS: Yeah that's right.

GUIPPONE: You shouldn't even tell him. You should forget it

WILLIAMS: (UI) guy (UI)
PORCELLI: (UI).
GUIPPONE: Yea
PORCELLI: (UI) hired that guy (UI).
WILLIAMS: I need it now. I got to go to the dentist.
PORCELLI: I ain't got it now. Tonight I'll bring it, seven thirty
WILLIAMS: Here's, here's the money.
PORCELLI: Seven thirty I bring it.
WILLIAMS: Given you 20 thou.
(Sound of paper).
PORCELLI: Where's your notebook by the way?
WILLIAMS: How much I owe ya
PORCELLI: I figure about least, 15 hundred.
WILLIAMS: 15 hundred?
PORCELLI: At least. I'll be honest, I'd say fuck the rest.
GUIPPONE: What you want?
WILLIAMS: You better send me a half. No, ah, ah, lets see you better send me, uh, three. Dont send one.
PORCELLI: Three quarters?
WILLIAMS: Yea, you can send three quarters or send half, it'll take a week or so.
PORCELLI: OK. (UI)
WILLIAMS: You know, the same as is this cause I'm not going to rush.
PORCELLI: Alright, ok. ok.
PORECLLI: Uh, uh, if you want, I'll make a special trip for that. If you want, if you don't, I'll give it tomorrow (UI).
GUIPPONE: Come on what we did yesterday (UI) (UI). put everything over there.

WILLIAMS: Well, he got to go get it anyway.
PORCELLI: Tomorrow. Tomorrow I'll get it.
GUIPPONE: It's gonna take a little while, we'll get it all at once.
PORCELLI: Alright? Don't get desperate be reasonable (laughter).

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